

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.202(b),  
Table of Allotments,  
FM Broadcast Stations.  
(Mendocino, California)

)  
)  
)  
)  
)  
)

MM Docket No. 01-168 /  
RM-10187

**REPORT AND ORDER**  
**(Proceeding Terminated)**

**Adopted: November 28 , 2001**

**Released: December 7, 2001**

By the Chief, Allocations Branch:

1. The Allocations Branch has before it the Notice of Proposed Rule Making, 16 FCC Rcd 14598 (2001) ("Notice"), issued in response to a petition for rule making filed by George Anderson, the former licensee<sup>1</sup> of Station KMFB(FM), Channel 224A, Mendocino, California. Anderson proposed the substitution of Channel 266A for Channel 224A at Station KMFB, Mendocino, California, to enable Station KMFB to operate at maximum facilities of 6 kilowatts effective radiated power and 100 meters antenna height above average terrain (HAAT). It currently operates on Channel 224A at 3 kilowatts effective radiated power and 100 meters antenna HAAT. Four Rivers Broadcasting, Inc. ("Four Rivers"), the current licensee of Station KMFB, filed comments affirming Anderson's proposal and expressing its intent to implement the proposal if Channel 266A is substituted for Channel 224A at Mendocino, California. Christian Country Network, Inc. ("CCN") filed comments in which it proposed that Channel 266A be allotted to Mendocino and that Channel 224A be retained at Mendocino. Four Rivers filed reply comments. For the reasons stated below, we are granting Four Rivers' request to substitute Channel 266A for Channel 224A at Mendocino, California.

2. In its Reply comments, Four Rivers does not object to the retention of Channel 224A at Mendocino, but observes that Channel 224A is a substandard allotment because it could not be utilized to operate as a full power Class A station. In this light, Four Rivers suggests that if the Commission substitutes Channel 266A for Channel 224A at Station KMFB and decides to have another channel at Mendocino to accommodate CCN or other interested parties, the Commission should consider allotting Channel 270A rather than 224A to Mendocino.

<sup>1</sup> Four Rivers Broadcasting, Inc. ("Four Rivers") is the current licensee of Station KMFB. Four Rivers explains that the license for that station was assigned to Four Rivers by the former licensee and original petitioner in this rulemaking proceeding, George Anderson (File No. BALH-20010508AAV). Four Rivers states that the foregoing application was granted and the assignment was consummated on August 1, 2001. Thus, Four Rivers has assumed the role of petitioner.

3. After having reviewed the comments, reply comments, and the facts of this case, we have determined that it is in the public interest to grant Four Rivers' request to substitute Channel 266A for Channel 224A. This new allotment to Mendocino will enable Four Rivers to provide greater FM service to Mendocino and surrounding areas than if it continued to use Channel 224A. We have also determined not to act upon CCN's request to retain Channel 224A at Mendocino or Four Rivers' "suggestion" that we add Channel 270A at Mendocino to accommodate CCN or other parties interested in allotting an FM channel besides Channel 266A to Mendocino for two reasons. First, neither CCN's proposal to retain Channel 224A at Mendocino nor Four Rivers' suggestion that we add Channel 270 to Mendocino constitute "counterproposals" as defined by relevant case law, because they are not mutually exclusive with Four Rivers' proposal to substitute Channel 266A for Channel 224A at Mendocino. See, e.g., Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments, 5 FCC Rcd 931, n.5 (1990).<sup>2</sup> Second, since we are granting an equivalent class channel change,<sup>3</sup> as opposed to a channel upgrade pursuant to Section 1.420(g) of the Rules, we are not required to accommodate other expressions of interest in similar facilities from parties other than the licensee.<sup>4</sup> Nevertheless, CCN is free to file a petition for rule making to add a channel to Mendocino in a new and different proceeding than this one, if it so desires.

4. As stated in the Notice, Channel 266A can be allotted to Mendocino, California, in conformity with the minimum distance separation requirements of Section 73.207(b) of the Commission's Rules, utilizing Four Rivers' existing transmitter site at the coordinates of 39-20-33 North Latitude and 123-46-51 West Longitude.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective January 22, 2002, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, as follows:

<u>Community</u>	<u>Channel Number</u>
Mendocino, California	266A

<sup>2</sup> Further, since Four Rivers' proposal to allot Channel 270A to Mendocino was filed after the date allowed for filing initial comments, it cannot be considered as a counterproposal. See Section 1.420(d) of the Commission's Rules and paragraph 3(a) of the Appendix to the Notice herein.

<sup>3</sup> Even though some Class A FM channels are restricted to 3 kilowatts effective radiated power while others can use 6 kilowatts effective radiated power, all Class A channels are considered to be equivalent. See Elkins, West Virginia et al., 7 FCC Rcd 5527, 5529 (Policy and Rules Div. 1992).

<sup>4</sup> See Modification of FM and TV Licenses, 98 FCC 2d 916, 921-22 (1984),

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Four Rivers Broadcasting, Inc. for Station KMFB(FM), Mendocino, California, IS MODIFIED to specify operation on Channel 266A in lieu of Channel 224A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in the current license for Station KMFB(FM) except for the channel as specified above. Any changes, except for those specified, require prior authorization pursuant to an application for construction permit (Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Commission's Rules, provided the transmission facilities comply in all respects with the current license for Station KMFB(FM), except for the channel as specified above, and a license application (Form 302) is filed within 10 days of the commencement of program tests.

7. IT IS FURTHER ORDERED That this proceeding IS TERMINATED.

8. For further information concerning the above, contact R. Barthen Gorman, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau